

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 5/24/2012

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Mod. 1 to Annexation and Development Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into Modification No. 2 to Annexation and Development Agreement between the City of Huntsville and LW Redstone, LLC, as adopted and approved by Resolution No. 10-208 on March 25, 2010..

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: 189,070

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: _____

RESOLUTION NO. 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Modification No. 1 to Annexation and Development Agreement by and between the City of Huntsville and LW Redstone Company, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Modification No. 1 to Annexation and Development Agreement between the City of Huntsville and LW Redstone Company, LLC," consisting of five (5) pages and the date of May 24, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 24th day of May, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 24th day of May, 2012.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
COUNTY OF MADISON)

**MODIFICATION NO. 1
TO ANNEXATION AND DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF
HUNTSVILLE AND LW REDSTONE
COMPANY, LLC, AS ADOPTED AND
APPROVED BY RESOLUTION
NO. 10-208 ON MARCH 25TH, 2010**

MODIFICATION NO. 1

This Modification No. 1 (this "Amendment") is hereby made as of the ____ day of May, 2012, to the Annexation and Development Agreement dated March 25, 2010, ("Agreement"), between THE CITY OF HUNTSVILLE, ALABAMA, a municipal corporation organized and existing pursuant to the laws of the State of Alabama ("City") and LW REDSTONE COMPANY, LLC, a Delaware limited liability company ("Owner"). City and Owner are entering into this Amendment in order to amend those portions of Section 6.9 Federally Maintained Arsenal Improvements that describe the \$2,500,000 contribution from the City of Huntsville to the United States Army ("Army") for infrastructure improvements on Redstone Arsenal and to address other matters.

RECITALS

WHEREAS, the Army has requested that the \$2,500,000 contribution from the City as required in Section 6.9 of the Agreement and pursuant to the Master Lease Agreement for Enhanced Use Leases Redstone Arsenal executed July 16, 2009 by and between the United States of America acting by and through the Secretary of the Army and Owner as further amended by that certain Supplemental Agreement 1 dated March 5, 2012 (collectively, the "Master Lease") would be most beneficial to the improvement of Redstone Arsenal if the City uses these funds to make "in kind" contributions of the Arsenal Improvements (defined below);

WHEREAS, Section 6.9 of the Agreement sets forth certain conditions which must be satisfied prior to the City contributing \$2,500,000 towards the Arsenal Improvements, which conditions have been satisfied prior to the date of this Amendment; and

WHEREAS, the City is willing to make these contributions in lieu of a cash contribution to the Army for the Arsenal Improvements and such is amenable to the Owner.

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and promises of the City and Owner herein contained, the City and Owner agree as follows:

MODIFICATIONS TO ORIGINAL AGREEMENT

1. Section 6.9 of the Agreement is hereby amended and restated in its entirety as follows:

"6.9 Federally Maintained Arsenal Improvements. The City agrees that (i) immediately after the effective date of the Annexation and approval by the City and the Madison County Commission (the "Commission") of the TIF, or (ii) upon receipt by the City of a notification from the Army that the Army will not de-annex the Project Site from the corporate boundaries of the City should following Annexation the Commission reject the approval of the TIF after considering the same at a public meeting of the Commission, but in no event prior to the ninetieth (90th)

President of the City Council of the
City of Huntsville, Alabama
Date: _____

day following the effective date of Annexation of the Project Site by the City, the City shall cause the following capital infrastructure improvements (the “**Arsenal Improvements**”) to be made to Redstone Arsenal up to an amount not to exceed \$2,500,000 (the “**Arsenal Improvement Funds**”):

(a) The relocation, widening and other improvements to Goss Road and coordination with Owner in connection with Owner’s improvements to Rideout Road (the “**Goss Road Improvements**”), and

(b) To the extent of the remaining balance of the Arsenal Improvement Funds, construction of General Flag Officer Housing within the Redstone Arsenal (the “**Officer Housing**”).

With regard to the Goss Road Improvements, Owner understands, confirms and agrees that the City shall contract for the design and construction of the Goss Road Improvements. If necessary, the City shall enter into a Memorandum of Understanding with the Army to assure a common understanding with regard to any Army requirements, standards, access issues or other terms and conditions for the Goss Road Improvements. Subsequent to completion of construction of the Goss Road Improvements and acceptance by the Army, the City shall have no responsibility or liability for maintenance the maintenance of or defects in the design and construction of the Goss Road Improvements.

With regard to the construction of the Officer Housing, the City shall transfer to the Federal Building Authority of the City of Huntsville, Alabama that portion of the Arsenal Improvement Funds which remains after completion of the Goss Road Improvements.

The City shall provide the funds for the Arsenal Improvements from any sources lawfully available to the City for such purpose and at the discretion of the City.”

2. Section 7.4 of the Agreement is hereby amended and restated in its entirety as follows:

“7.4 Maximum City Obligation. It is hereby understood, acknowledged and agreed that the maximum financial or payment obligations of the City hereunder shall not exceed (i) undertaking the Arsenal Improvements as required by Section 6.9 of this Agreement, up to the Not-to Exceed amount of the Arsenal Improvement Funds, (ii) \$76,000,000 (plus interest and financing costs associated therewith) for designing, developing, constructing, and acquiring Public Infrastructure Improvements, and (iii) payment, at its expense, for the City Sewer Work as described in Exhibit C-1.”

3. Section 14.16 of the Agreement is further modified by adding the following sentence to the end of such section:

The City acknowledges, confirms and agrees that the condition set forth in clause (ii) of the immediately preceding sentence may be satisfied pursuant to the City and the Army entering into a Memorandum of Understanding, easement, right of way or similar agreement which confirms the Army’s obligations to the City pursuant to existing laws governing the Environmental Conditions and Environmental Claims set forth in the Master Lease.

4. The parties hereby ratify the Agreement, as amended hereby, and confirm that the Agreement, as hereby amended, remains in full force and effect. If any provision of this Amendment conflicts with the terms or conditions of the Agreement, then the provisions of this Amendment shall be controlling.

5. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement.

[Signatures are on the next page.]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first above written.

(“OWNER”)

LW REDSTONE COMPANY, LLC

By: _____
Name:
Its:

STATE OF MARYLAND)
COUNTY OF HOWARD)

I, the undersigned, a Notary Public in and for said County and in said State, hereby certify that _____, as _____, of LW Redstone Company, LLC, a Delaware corporation, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, as such officer and with full authority, executed the same for and as the act of said corporation on the date the same bears date.

GIVEN under my hand and official seal this the ____ day of _____, 2012.

_____(SEAL)
Notary Public
My Commission Expires: _____

[Signatures continue on the next page.]

(“CITY”)

THE CITY OF HUNTSVILLE, ALABAMA
A municipal corporation

By: _____
Tommy Battle, Mayor

ATTEST:

Charles E. Hagood
Clerk-Treasurer

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County and in said State, hereby certify that Tommy Battle and Charles E. Hagood, as Mayor and City Clerk-Treasurer, respectively, of the City of Huntsville, Alabama, a municipal corporation, are signed to the foregoing document, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same for and as the act of said corporation on the date the same bears date.

GIVEN under my hand and official seal this the ____ day of May, 2012.

Notary Public
My Commission Expires: _____

(SEAL)

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 5/24/2012

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Mod. 1 to Annexation and Development Agreement

Document Name: Modification No. 1 to Annexation and Development Agreement LW Redstone

City Obligation Amount:

Total Project Budget: 2,500,000

Uncommitted Account Balance:

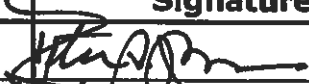


Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Other</u>	Grant Name:
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Department	Signature	Date
1) Originating		<u>5-22-12</u>
2) Legal		<u>5-22-12</u>
3) Finance		
4) Originating		<u>5-22-12</u>
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		